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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of CRYSTAL J. and EUGENE R. HUMPHRIES.	
CRYSTAL J. HUMPHRIES, Appellant, v. EUGENE R. HUMPHRIES, Respondent.	G047155 (Super. Ct. No. 06D007909) O P I N I O N

Appeal from an order of the Superior Court of Orange County, James L. Waltz, Judge. Affirmed.

Lemkin, Barnes & Row and Wm. Curtis Barnes, Jr., for Appellant.

Seastrom & Seastrom, Philip G. Seastrom and Ryan B. McIntire for Respondent.

Crystal J. Humphries appeals from a postjudgment order denying her order to show cause (OSC) requesting that her former husband, Eugene R. Humphries, be ordered to pay their children's college expenses.[1] Crystal contends the trial court erred by concluding a college expense payment provision contained in a stipulated temporary support order did not survive the final judgment in this marital dissolution action, which contained no such provision. We reject her contentions and affirm the order.

FACTS & PROCEDURE

Crystal and Eugene were married in 1990 and had three minor children (ages 13, 11, and 8) when they separated in June 2006. This family law matter began in June 2006, when Crystal filed a request for a domestic violence restraining order and obtained an emergency protective order against Eugene under the Domestic Violence Protection Act (Fam. Code, §§ 6200 et seq.)[2] in case No. 06V001435 (hereafter the DV Action). On August 9, 2006, Crystal and Eugene stipulated to an order on "custody, visitation and other orders," in the DV Action (hereafter the 2006 Order). The emergency protective order was removed and Eugene agreed to not harass Crystal or have anything other than "brief and peaceful contact [with her] as required for visitation or for reconciliation purposes." The 2006 Order included child custody and visitation provisions, financial provisions relating to preservation of community assets, provisions allowing Crystal (and the children) to remain living in the family residence at Eugene's expense, and provisions requiring Eugene to "continue to support [Crystal] and the children" and to continue paying the children's private school tuition and for their "tutors, lessons, special programs, camps and doctors . . . pursuant to past practice." The 2006 Order provided Eugene would "pay for the children's church mission." And most

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1 As is the custom in family law cases, we hereafter refer to the parties by their first names for ease of reading and to avoid confusion, and not out of disrespect. (*In re Marriage of James & Christine C.* (2008) 158 Cal.App.4th 1261, 1264, fn. 1.)

2 All further statutory references are to the Family Code.

significant to this appeal, the 2006 Order contained a provision that Eugene "shall pay for four years of undergraduate education at a certified university of the child's choice, at the rate of a school in the UC system in California as well as book and living expenses so long as the child is a full time student taking at least 14 units per semester and maintaining a G.P.A. of at least 2.5" (hereafter the college expense provision).

Crystal then filed the instant marital dissolution action, case No. 06D007909, and in January 2008, she filed an OSC regarding spousal and child support. The court ordered the DV Action consolidated with the dissolution action, ordered everything in the file pertaining to the DV Action renumbered with the dissolution action case number, and dismissed the DV Action.

On April 14, 2008, Crystal and Eugene stipulated to an order on Crystal's OSC (hereafter the April 2008 Order). The April 2008 Order included that Eugene would "continue to support [Crystal] and the children[,]" and provided "[a]ll other orders contained in the [2006 Order] shall remain in full force and effect."

Crystal and Eugene proceeded to litigate the dissolution of their marriage and over the course of the next two years, five different judgments on reserved issues were entered, none of which made any mention of the college expense provision.

On May 21, 2008, a judgment on status only was entered terminating marital status. On June 13, 2008, a judgment on reserved issues was entered dividing proceeds received upon closing two financial accounts.

On April 22, 2009, the third stipulated judgment on reserved issues was entered (hereafter the April 2009 Judgment). The Judicial Council form FL-180 judgment checked box 4g providing, "Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below." The April 2009 Judgment made additional division of various financial accounts. Crystal and Eugene agreed Crystal would be named as a joint custodian on three First Eagle Funds accounts (each one was in the name of one of the three children), and "[t]he funds in these accounts shall

be used for the children's college educational expenses and tuition, or for other expenses as mutually agreed to by the parties."

On July 2, 2009, the fourth stipulated judgment on reserved issues, dealing with an aspect of Eugene's interest in his dental practice, was entered (hereafter the July 2009 Judgment). Again, the Judicial Council form FL-180 judgment checked off box 4g providing, "Jurisdiction is reserved over all other issues, and all present orders remain in effect except as provided below."

On August 18, 2010, following an 11-day trial, the fifth, and last, judgment on reserved issues was entered (hereafter the August 2010 Judgment). Unlike the prior judgments, the Judicial Council form FL-180 judgment did not check box 4g (i.e., that jurisdiction was reserved and all prior orders remained in effect), and instead checked box 4h stating, "This judgment contains provisions for child support or family support" and stated child and spousal support were being ordered as set forth in the August 2010 Judgment.

The couple's youngest son (now age 13) was living out of state in a private school "wilderness program" and child support as to him was reserved. Eugene was ordered to pay $4,340 per month combined child support to Crystal for the other two children until that child "marries, dies, is emancipated, reached [age 19] or reaches [age 18] and is no longer a full time high school student, whichever occurs first." Eugene was ordered to pay Crystal $3,000 a month spousal support. Eugene had paid Crystal approximately $620,000 in spousal and child support since July 2006, but was ordered to pay Crystal an additional $69,000 in arrearages and *Epstein* credits (*In re Marriage of Epstein* (1979) 24 Cal.3d 76, 84-85 [credits for spouse who after separation uses separate property to pay a community debt or to maintain a community asset]). The August 2010 Judgment included custody and visitation orders. The August 2010 Judgment divided the remaining community property, finding that in the community property division (effectuated by all the judgments), Crystal was awarded $1,858,703 in assets; Eugene

was awarded $2,440,851 in assets and ordered to make an equalizing payment to Crystal of $291,074.

On September 22, 2011, Crystal filed an OSC seeking an order directing Eugene to comply with the college expense provision contained in the 2006 Order and the April 2008 Order. She contended the college expense provision constituted a permanent adult child support order that survived the final judgment. In her moving papers, Crystal explained Eugene was refusing to pay for the couple's oldest and now adult son to attend a private college in Hawaii.

Eugene opposed Crystal's OSC arguing the college expense provision was a part of a temporary order that terminated upon entry of the final judgment which did not incorporate the order. Moreover, Eugene explained he opposed the particular college plan for their eldest son because he believed it was not in his son's best interests—Eugene did not object to paying for his children's college education. Eugene explained his oldest son had learning disabilities and social anxiety issues in high school, exacerbated by being in large groups, that resulted in his son getting F's and D's in high school and eventually dropping out of high school—completing his diploma via an online program. His oldest son had never lived away from home, and Eugene had serious concerns about his son's ability to be responsible so far away from home. Eugene believed the best course for his oldest son was to first attend community college for two years to acclimate to a large school environment. Additionally, Eugene was concerned about maintaining sufficient funds to pay for *all* his children's college educations.

The trial court denied Crystal's motion. It found the college expense provision did not constitute a permanent child support order. The college provision in the 2006 Order and the April 2008 Order was a pendente lite order that was not included in the August 2010 Judgment, which the court found was the final and controlling judgment. Additionally, the court concluded the college expense provision was too

vague to be enforceable—there was no way to calculate what was owed in accordance with the provision.

DISCUSSION

Crystal contends the trial court erred by denying her OSC to compel Eugene to pay their oldest son's college expenses. We conclude the trial court correctly found the college expense provision was not enforceable because it was part of a temporary order that was not incorporated into the final judgment in this matter.

Whether the college expense provision constituted a permanent or final child support order raises a question of law, which we review de novo. (*In re Marriage of Gruen* (2011) 191 Cal.App.4th 627, 637 [applying de novo standard of review to "purely legal questions" raised on appeal].)

"[I]n California the child support obligation normally ends when the child reaches 18 years of age. (§ 6500.) Parents have no legal obligation to pay for the college education of an adult child. (*In re Marriage of Smith & Maescher* (1993) 21 Cal.App.4th 100, 107-108 . . . [(*Smith*)].) A parent may agree to pay for such expenses, but the court's jurisdiction in a dissolution proceeding to enforce the agreement is statutory. (§ 3587.)" (*In re Marriage of Jensen* (2003) 114 Cal.App.4th 587, 597, fn. omitted.) For example, in *Smith*, *supra*, 21 Cal.App.4th 100, the court considered the enforceability of a marital settlement agreement that was incorporated by reference into the final judgment of divorce by which husband agreed to pay the children's college expense. (*Id.* at p. I04.) The court concluded the adult child could enforce the agreement as a third party beneficiary of the parents' property settlement agreement. (*Id.* at pp. 105-106, 108.) The court also concluded the wife "as a promisee, ha[d] a right to enforce [husband's] promise to pay for [the adult child's] college education[,]" e.g., by specific performance, although she could not maintain a cause of action against the husband for damages to recover college expenses she gratuitously paid on the adult son's behalf. (*Ibid.*; see also *Sheldon v. Superior Court* (1967) 257 Cal.App.2d 541, 544 [trial court may include

provision in judgment for adult child support pursuant to marital settlement agreement]; see also Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶ 6:59, pp. 6-38 to 6-39.)

Crystal argues the college expense provision constituted an enforceable agreement to pay adult child support under section 3587. That section allows a court "to approve a stipulated agreement by the parents to pay for the support of an adult child or for the continuation of child support after a child attains the age of 18 years and to make a support order to effectuate the agreement." Assuming for our purposes an agreement to pay an adult child's college *expenses* constitutes an agreement to pay adult "child support,"[3] we nonetheless agree with the trial court the provision at issue here was only part of stipulated temporary orders. It was not part of a martial settlement agreement incorporated into the final judgment.

"'A variety of interim, "temporary" orders (also referred to as "pendente lite" relief) may issue in domestic relations proceedings pending trial and ultimate judgment.' [Citation.] Pending final resolution of the case, the court may order one spouse to support the other, and either or both parents to pay 'any amount necessary' to support the children. (§ 3600.) [¶] 'There are fundamental differences in the functions and purposes of pendente lite support and permanent support orders.' [Citation.] 'The

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[3] Crystal cites *Edwards v. Edwards* (2008) 162 Cal.App.4th 136 (*Edwards*), for the proposition the agreement to pay college *expenses* constitutes adult child *support* under section 3587, but the case does not stand for that proposition. In *Edwards*, the court entered a stipulated judgment of dissolution in accordance with the parties' marital settlement agreement that provided husband would continue paying child support to wife until their son reached age 25 or completed college, and that husband and wife would equally share their son's college expenses. (*Id.* at pp. 138-139.) There was no issue in *Edwards* about the enforceability of the parties' agreement to share their son's college expenses. Rather, the issue in *Edwards* was whether for purposes of calculating guideline child support upon father's motion to modify, mother was entitled to 100 percent time-sharing responsibility for the now adult child who had moved away to college. The appellate court held she was not and ordered the child support reduced to zero. (*Id.* at p. 140.)

temporary support award is usually obtained soon after the filing of the petition and before any final determination on the various issues in the dissolution. Its purpose is to maintain the living conditions and standards of the parties [and their children] as closely as possible to the status quo, pending trial and the division of the assets and obligations of the parties.' [Citation.] A temporary order is intended to allow the supported spouse and children to live in their '"'accustomed manner'"' pending the ultimate disposition of the action. [Citation.] 'The order is based on need and is not an adjudication of any of the issues in the litigation.' [Citation.]" (*In re Marriage of Gruen, supra,* 191 Cal.App.4th at p. 637.) "While a pendente lite order has many features of a judgment in other contexts, it does not finally determine the rights of the parties in the sense of a judgment, has no tendency to bring the litigation to conclusion . . . ." (*Moore v. Superior Court* (1970) 8 Cal.App.3d 804, 810 (*Moore*).) A temporary support order terminates upon entry of a permanent support order. (*In re Marriage of Hamer* (2000) 81 Cal.App.4th 712, 717-718; *In re Marriage of Horowitz* (1984) 159 Cal.App.3d 377, 380, fn. 1; see also *Wilson v. Superior Court* (1948) 31 Cal.2d 458, 462-463 [award of temporary alimony is terminated if not carried into final decree of divorce].)

The college expense provision originated in the DV Action. Section 6341 permits the court in a domestic violence case to enter child and spousal support orders. The 2006 Order was plainly one maintaining the parties' status quo by affirming Eugene would continue paying for all the family's expenses in accordance with the current practice, setting forth custody and visitation schedules and preserving community assets. Nothing in the 2006 Order indicates it was intended as a final determination of the parties' rights and responsibilities. (*Moore, supra,* 8 Cal.App.3d at p. 810.) Crystal filed the dissolution action, and the DV Action was dismissed. The 2006 Order was given the dissolution action case number, and in response to Crystal's OSC regarding support, the parties stipulated to an order that Eugene would "continue to support [Crystal] and the children" and the 2006 Order would remain in full force and effect. But this too was a

temporary order to maintain the parties' status quo. There was no marital settlement agreement. Rather, the court held an 11-day trial on this dissolution case, that resulted in a final judgment awarding permanent spousal and child support and that judgment did not provide that any prior orders would remain in effect. The August 2010 Judgment provided it was the judgment containing spousal and child support orders. The August 2010 Judgment did not incorporate any prior agreement by Crystal and Eugene concerning the payment of college expenses.

Crystal cites sections 6340 and 6345 for the proposition that support orders issued in a domestic violence matter survive termination of a protective order. Based on that she argues because the college expense provision was in a support order made in the DV Action, it did not need to be readdressed in the dissolution action. But here the DV Action was consolidated with the dissolution action and then dismissed, and thus, neither of those sections are relevant. Crystal also argues support orders originating in the DV Action did not have to be incorporated into a final dissolution judgment to remain effective because incorporating domestic violence orders into a dissolution judgment is purely discretionary. Crystal refers us to section 6360, which provides a dissolution judgment "*may* include a protective order," and section 6361 which provides that if "[a protective] order is included in a [dissolution] judgment" the judgment must state which of its provisions constitute the protective orders and must specify the date of expiration of the protective orders. Those sections have no bearing on incorporation of temporary *support* orders into the final dissolution judgment.

In short, because the 2006 Order was a temporary order and was not incorporated into the final judgment, the college expense provision is not enforceable. For this reason, we need not consider the trial court's alternative basis for denying Crystal's OSC—namely, that the college expense provision was too vague and uncertain to be enforced.

DISPOSITION

The order is affirmed. Respondent is awarded his costs on appeal.

O'LEARY, P. J.

WE CONCUR:

ARONSON, J.

THOMPSON, J.